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## Comments on proposed rules on manual counts

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To: Ddawson@sos.ca.gov, nrobinson@sos.ca.gov  
Cc: Paul Burke

Wed, Jul 5, 2023 at 4:35 PM

The Honorable Shirley N. Weber  
California Secretary of State  
1500 11th Street  
Sacramento, CA 95814

Dear Secretary Weber:

We joined with the comments sent in by Paul Burke, but have these additional comments that did not make the time deadline.

### **1. Regarding general notion of hand counts:**

There is a difference between hand counts when performed to validate or check the results of a voting system, vs. using hand counting as the primary means to create an independent result. In the former case, counts used in the 1% Manual Tally for example, are compared with the machine result and frequently batches are recounted to reduce manual counting errors. This is in contrast with hand counting as the primary means to create an independent result. Such hand counting needs a way to control human errors, which are quite common. One strategy is to use competitive teams that can tally and check their results against each other. The method used in Columbia County NY, which uses redundant clickers counting each contest lacks in the auditability of the method because there is no paper trail, and thus is not recommended.

We support the availability of BALLOT IMAGES and CAST VOTE RECORDS. These are routinely made available by San Francisco County, and all counties should follow suit. Further, we support that counties can make use of TABULATION AUDITS using ballot images and cast vote records.

### **2. We support that the public must be able to video record and photograph counting operations**

We must differentiate here between the use of these devices by the counting staff and the use by public observers. Public observers should be allowed to use video or still-photo recording devices to document what they see so they can ask questions and gather evidence. Counting staff, on the other hand, must not be distracted by using cell phone during the counting process.

**Changing colors of pens** is based on the theory that there is risk that tally teams cannot be trusted. In our observations of hand tallies, we believe this fear is misplaced, particularly if there is sufficient monitoring. Again, we believe video recording by observers can help avoid any malicious behavior by tally teams. Also, some pen colors do not reproduce well when scanned.

### **Also regarding sheet colors:**

Again, this fear is misplaced and we believe it is better to provide for improved observation by the public and to allow video recording to reduce any risk of that type. Changing colors of the sheets each day or pen colors also means you have to have someone monitor and report that the colors are correct. If varied colors are used, then a procedure will need to be defined to inspect the colors and report on them.

### **3. Regarding AUDITS OF HAND COUNTS:**

If the ballots are not already counted by the certified voting system being used, configuring a different voting system to count those ballots is similar to performing a ballot-image audit, but a different vendor voting system is not able to process ballots from a different vendor, and such counts require a significant amount of configuration and testing, similar to the Logic and Accuracy test currently being used. Therefore, checking hand counts using a machine is not viable because configuring the machine is far harder than this provision implies.

#### **4. "Cumulation" vs. "Accumulation"**

We believe the term should be accumulate rather than cumulate

*Cumulative* refers to amassing or building up over time; growing by successive additions. *Accumulative* refers to the result of accumulating. It also implies an acquisitiveness or penchant for acquiring or accumulating things. Thus, a cumulative final exam, includes information from the entire course. Accumulate actually means to add up.

#### **5. 1% Manual Tally**

With the increase of the use of permanent vote-by-mail voting where now we see about 90% of the voters using that method, there are now sometimes nearly half of the ballots still uncounted on election day, and thereby can be excluded from the 1% Manual Tally audit. These later-arriving (but still timely) ballots should be included in the random sampling process and thereby included in the 1% Manual Tally. Excluding nearly half of the ballots from the random selection process is inexcusable. The changes to the election law by AB-840 should be reversed and VBM ballots included in the 1% Manual Tally audit in all counties.

#### **6. Random Selection**

We suggest a standard method in how random numbers are selected by all counties. They should be selected by rolling one colored 10-sided die for each digit simultaneously which selects the precincts or batches from a sequentially numbered list. If the number does not exist, the dice are rolled again. This should be live-streamed in a public ceremony and video cameras must be allowed. When batches are selected in a batch-sampling method, then it is best if they are weighted by size, if there is significant variation in size. Sampling a batch of 1 ballot is not the same as sampling a batch of 3000. Weighted sampling is done by allocating ranges of numbers to each batch proportional to the size of each batch and rolling dice as described above, and then choosing the batch if the number falls in the range. The calculation of the ranges can be done with a spreadsheet that lists the sizes of each batch, and then divide the size by say 100, truncate to an integer and add 1, thereby providing a number proportional to the size of each batch in 100s, and then calculating ranges using this value to start the current range based on the end of the prior range.

Selecting numbers from a hat is problematic because it is unclear if all the numbers are in the hat, and sleight of hand is relatively easy to use to select some folded or unfolded pieces of paper, for example. I once participated in the random draw in San Luis Obispo County, and they came out with a bowl of numbered slips of paper. I asked them if they were all in there, and they assured me that they were. I proceeded to spend 45 minutes verifying the contents of the bowl and found that three precincts were missing. This does not help voter confidence.

#### **7. SORTING IN MANUAL RECOUNTS**

Proposed rule 20372(a) requires sorting ballots by precincts and candidates and counting the stacks. Research shows that the "sort and stack" method is less accurate than the "read and tally" method. It is also less observable, and does not provide hard evidence of the tally results. Therefore, the primary method for counting should be by using tally sheets using the read and tally method. The sort and stack method results in the ballots being reordered, which means it is not possible to track down differences between tally teams.

Respectfully submitted,

Ray Lutz, Executive Director

<https://CitizensOversight.org>, creator of <https://AuditEngine.org>, a ballot image auditing platform.

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